

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL MINING ASSOCIATION, et al.)	
Plaintiffs,)	
)	
v.)	No. 1:00CV03086 (EGS)
)	
ELAINE L. CHAO,* Secretary of the U.S.)	
Department of Labor, and THE UNITED STATES)	FILED
DEPARTMENT OF LABOR,)	
Defendants.)	FEB - 9 2001
)	
UNITED MINE WORKERS OF AMERICA, et al.)	NANCY MAYER WHITTINGTON, CLERK
Intervenor-Defendants.)	U.S. DISTRICT COURT

PRELIMINARY INJUNCTION ORDER

At issue in this case are various revisions to the regulations implementing the Black Lung Benefits Act, 30 U.S.C. §§ 901 *et seq.*, recently promulgated by the Department of Labor after four years of rulemaking proceedings. These regulatory revisions became effective as scheduled on January 19, 2001. See 65 Fed. Reg. 79920-80107 (Dec. 20, 2000).

Pending before the Court is plaintiffs' motion for a preliminary injunction, in which plaintiffs seek an Order from the Court preliminarily enjoining the implementation of forty-seven (47) of the regulatory provisions challenged, namely: 20 C.F.R. § 718.104(d); 718.201(a)(2) and (c); 718.204(a); 718.205(c)(5) and (d); 725.2(c); 725.4; 725.101(a)(6); 725.103; 725.202(b); 725.209; 725.212(b); 725.213(c); 725.219(d); 725. 309; 725.310; 725.366(b) and (c); 725.367; 725.406; 725.407 through 419; 725.456 though 459; 725.465(b) and (d); 725.493; 725.502; 725.503; 725.607; 725.608; 725.201; 726.8(d); and 726.203(a).

* Pursuant to Fed.R.Civ.P. 25(d), Elaine L. Chao, sworn in as the new Secretary of the Department of Labor on January 31, 2001, is substituted for her predecessor, Alexis Herman.

[Editor's note: Deletions shown by strikeout and blue text, and addition shown by double underlining and text and indicate a change initialed by parties and Intervenor on original document]

With the consent of defendants and plaintiffs, ~~but over the~~ and without objections of the intervenor-defendants, the Court in the interest of justice hereby grants plaintiffs limited preliminary injunctive relief, and orders that claims for black lung benefits shall be processed and adjudicated for the duration of the briefing, hearing, and decision schedule set by the Court, as follows:

1. The Department of Labor's Office of Workers' Compensation Programs (OWCP) shall suspend, for the duration of the briefing, hearing and decision schedule set by the Court, the adjudication of all claims for black lung benefits filed after the new regulations became effective (January 19, 2001). Notwithstanding this suspension of proceedings, OWCP shall:

(a) develop evidence and notify responsible operators of their potential liability. The development of evidence includes gathering information relevant to the miner's employment history as well as gathering evidence contained in the public record, such as documents relevant to proof of age and family relationships.

(b) schedule miners for medical examination and testing pursuant to 20 C.F.R. § 725.406 (as revised).

(c) with regard to a survivor's claims, gather existing medical evidence.

(d) continue to process the claim up to, but not including, the issuance of a schedule for the submission of additional evidence pursuant to 20 C.F.R. § 725.410(a) (as revised).

2. With respect to claims for black lung benefits filed on or before January 19, 2001, which remain pending before the OWCP at the time of this Order, OWCP shall process and adjudicate claims pursuant to applicable regulations, see 20 C.F.R. § 725.2 (as revised) (detailing revised regulations that are not applicable to claims pending on January 19, 2001), with the following provisos:

(a) In any claim in which the district director determines, in accordance with the regulations, that the claimant is eligible for benefits but that a formal hearing before an Administrative Law Judge will be necessary to resolve the claim (either because a party has requested a hearing or the district director has ordered one), the Department will institute payment of benefits to the claimant, prior to final adjudication, from the Black Lung Disability Trust Fund in accordance with 26 U.S.C. § 9501(d)(1)(A)(1) and 20 C.F.R. §§ 725.420 and 725.522 (as revised).

(b) In any case in which a hearing before an Administrative Law Judge is either requested or ordered by the district director, the district director, pursuant to 20 C.F.R. § 725.421 (1999), will refer the claim to the Office of Administrative Law Judges for docketing.

(c) If the district director determines that a responsible operator (or its insurer) is liable for the claim and such operator has made a timely request for hearing before an Administrative Law Judge, the operator shall not be obligated to pay benefits to the claimant until an effective award is issued by the Administrative Law Judge, and the provisions of 20 C.F.R. § 725.607 (as revised) (providing for additional payments to claimant for failure to timely pay benefits awarded) will not apply until that time.

3. All claims for black lung benefits pending before the Department's Office of Administrative Law Judges at the time of this Order, or which become pending within the period set by the Court for briefing, hearing and decision on the merits, shall be stayed for the duration of the briefing, hearing and decision schedule set by the Court, except where the adjudicator, after briefing by the parties to the pending claim, determines that the regulations at issue in the instant lawsuit will not affect the outcome of the case.

4. All claims for black lung benefits pending before the Department's Benefits Review Board at the time of this Order shall be stayed for the duration of the briefing, hearing and decision schedule set by the Court, except where the adjudicator, after briefing by the parties to the pending claim, determines that the regulations at issue in the. instant lawsuit will not affect the outcome of the case.

5. Notwithstanding this Order, existing awards of black lung benefits shall remain in effect and enforceable.

The processing and adjudication of all claims for black lung benefits shall resume, without limitation, pursuant to governing regulations following the date set for a decision on the merits absent further Order of the Court.

SO ORDERED this 9th day of February, 2001.

s/_____
The Honorable Emmet G. Sullivan
UNITED STATES DISTRICT JUDGE

Consented to by:

s/ _____
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